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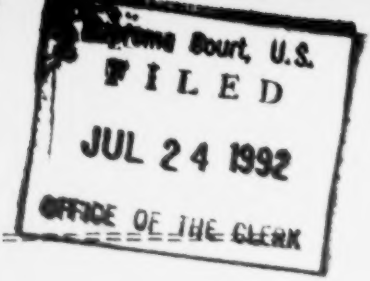

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IN THE

SUPREME COURT OF THE UNITED STATES

==========

OCTOBER TERM, 1991

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JOSEPH MURPHY, JR.

Petitioner

vs.

PATRICIA L. MURPHY

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FROM THE PENNSYLVANIA SUPREME COURT ALLOCATUR DOCKET 343 PGH AND 571 PGH 600 A.2d 1259 (Pa. 1992)

==========

PETITION FOR WRIT OF CERTIORARI

==========

Joseph Murphy, Jr.,
Pro Se
RD #1 Box 202
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40

QUESTIONS PRESENTED

1. Does any court in The United States of America have the right to administer proceedings against an individual without notifying him or giving him the opportunity to defend himself accordingly as pursuant to the Rules of Civil Procedure or to the 5th and the 14th Amendments? (App. 40)

2. Does any court within The United States of America have the right to dictate an individual's financial status and administer a court order to the affect of that dictation without giving an individual an opportunity to present his financial status?

3. Does any court in The United States of America have the right to falsify a court docket to assume an invalid performance set forth by the court, making the court docket ficticious or to justify

jurisdiction in said court resulting from falsified information therein?

4. How can a court that functions within the law completely disregard the fact that the Cambria County Court judges were suspended by the State Attorney General for corruption and wrongdoing, and still give no credibility or consideration to the Petitioner but rather affirm the validity of the actions administered by the lower court, which violates an individual's right to defend himself against false accusations?

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

JOSEPH MURPHY, JR.

Petitioner

vs.

PATRICIA L. MURPHY

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

Petitioner, Joseph Murphy, Jr., respectfully prays that a writ of certiorari issue to review the denial of appeal handed down from the Pennsylvania Supreme Court of Appeals on June 16, 1992, (App. 35) refusing to grant an appeal which originated from the Cambria County Court of Pennsylvania on October 3, 1983. The most extraordinary issue set forth is derived from a corrupt court system,

whereby the judges of said court were removed from the bench and at present are being prosecuted by the State Attorney General for criminal procedures and wrongdoings. Petitioner being a victim of said court system is indeed the basis set forth in this appeal. This appeal is derived from an invalid court system that involved petitioner for two and one-half (2½) years. This case originated in said court. The issues set forth in this appeal concerns depriving an individual of his constitutional rights as set forth in the laws of Pennsylvania, the wrongdoings and indeed the violation of the United States Constitution, and the statute of law set forth in the court system of Pennsylvania. After two and one-half (2½) years of persecution, this case was transferred to the Indiana County Court of Common Pleas, the court of proper venue.

OPINION BELOW

The opinion handed down from The State Superior Court of Appeals resulted in the appeal to The Supreme Court noting said error that was produced by a master of The Cambria County Court system. The enclosed, (App. 20-21), is the abstract from The State Superior Court's opinion by The Honorable Judge Cercone which does not conform with the statutes set forth in the Rules of Procedure and further substantiates petitioner's request as noted in Petition To Open Hearing, (App. 28-30), as depriving petitioner the right to open said hearings in order to expel the fraud and the extortion that was presented and took place in The Court of Common Pleas of Cambria County, Pennsylvania thus resulting in the appeal to The State Supreme Court. When an individual is denied through the judicial system of Pennsylvania, or even

The United States, the right to prove fraud and extortion, it is certainly a constitutional subject to be presented to The United States Supreme Court.

CONSTITUTION

U. S. Const., Amend V:

> "No person shall be . . . deprived of life, liberty, or property, without due process of law."

U. S. Const., Amend XIV:

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law."

JURISDICTION

The denial of appeal was handed down on April 28, 1992. A timely petition for reargument was filed on May 15, 1992. The State Supreme Court's denial of reargument was handed down on June 16, 1992. (App. 35) The court's jurisdiction is further invoked under the doctrine of law stated in the 5th and the 14th Amendments of The Constitution of The United States.

STATEMENT OF THE CASE

The Pennsylvania Supreme Court's denial of appeal handed down on May 26, 1992 under Allocatur Docket 571 and Allocatur Docket 343 is the result of this appeal to The United States Supreme Court. Due to the denial of the appeal and actually the giving of sanctions to a corrupt court system in Pennsylvania, the due process of law as outlined in the 5th and the 14th Amendments were not adhered to. Although this case originated October 3, 1983, commenced by a divorce action, that is not the specific format set forth in this appeal. The continuous action of this proceeding has now spanned nine and one-half (9½) years strictly derived from the misuse and manipulation of the legal system and most important, the abridging of an individual's constitutional right as set forth in The United States

Constitution. (App. 40) The enclosed docket entries (App. 31-39) is verification of the constraint of petitioner to bring forth the invalidated issues that were set forth by a corrupt court system.

On February 26, 1991 petitioner became so aggrieved with the bilking from attorneys over a seven (7) year period and the expense of well over Two Hundred Thousand Dollars ($200,000.) that petitioner decided to proceed Pro Se in this matter temporarily to bring the issues before the court. However, time was definitely a factor which petitioner could not correct in the proceedings at The Supreme Court of Pennsylvania, resulting in the denial of said appeal. The most important issue determined by petitioner at this time is that The Supreme Court of Pennsylvania gave no value to the constitutionality that was involved throughout

the entire case in which the judicial system was badly and fraudulently manipulated.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for the reason set forth:

This petition presents an issue of the injustice that can be administered by the legal system in our country. The constitutionality of petitioner has indeed been violated through the court system and if there is justice in The United States of America then indeed certiorari should be granted in this case in order to expose the improprieties so that it may align the legal system in the future for every citizen of The United States to be allowed the due process of law and that the courts must follow the rules of procedure, for when that is deviated from, then indeed our country is in deep jeopardy.

CONCLUSION

The worst possible condition that can exist in The United States, as stated before, is to have a corrupt court system whereby the judges of said court disregard the law of the land in issuing an exparte order and have that order continue for a period of almost nine (9) years without the defendant ever having a chance to defend himself to the aspects thereof. The record of this, being so voluminous, can only be set forth in a writ of certiorari exposing the issues such as falsifying the record, manipulating, and I might add, forging a court docket to apprehend the actions of said court. Even further to expedite that statement, to have the high court of one of the court systems in The United States actually give sanctions to the lower court by affirming the orders issued within is certainly the constitutional issue set forth in this appeal.

Therefore, petitioner prays to the court to indeed grant certiorari that justice may be served in our country.

Respectfully submitted,

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APPENDIX

APPENDIX A

App. 1

IN THE SUPERIOR COURT
OF PENNSYLVANIA
J. A34014/91
NO. 00032 Pittsburgh 1991

Patricia L. Murphy

v.

Joseph Murphy, Jr.,

Appellant

Appeal from the Order Entered
November 30, 1990 In the
Court of Common Pleas of
Indiana County Civil Division
No. 769 CD 1986

Before: McEWEN, OLSZEWSKI and CERCONE, JJ.

OPINION by CERCONE, J.:

FILED: October 3, 1991

This is an appeal from a final order directing appellant husband to pay arrearages of alimony pendente lite to his former wife. For the reasons set forth below, we affirm.

The unduly prolonged legal struggle underlying the instant appeal began, routinely enough, in 1983 when appellee

wife filed complaints in Cambria County for both support and divorce. In September of that year, the Honorable Caram J. Abood entered a protection from abuse order against appellant husband, Joseph Murphy, Jr. Judge Abood's order also required appellant to make support payments to appellee in the amount of $1,200 per month beginning Monday, October 3, 1983. This amount was subsequently reduced to $770 per month. Appellant's exceptions to the modified order were dismissed on November 19, 1983. Unfortunately, by May 3, 1984, appellant's refusal to comply with the lower court's directives resulted in the first of the contempt orders to be entered against him in connection with this case. In June of 1984, Judge Abood also found it necessary to extend the protection from abuse order previously entered in October of 1983. Appellant's

subsequent appeal from the modified support order resulted in the affirmation of the lower court's ruling. Murphy v. Murphy, 357 Pa. Super. 610, 512 A.2d 730 (1986), allocatur denied, 514 Pa. 625, 522 A.2d 50 (1987).

On multiple occasions, the lower court scheduled hearings before a domestic relations officer. Prior to each hearing, an order was entered directing both appellant and appellee to bring to the conference a copy of their most recent Federal Income Tax Return (as filed), pay stubs for the preceding six months, and a completed income and expense statement prepared in compliance with specific directions attached to the order. As this information was not forthcoming, Judge Abood entered a minutely detailed and specific order in January of 1985 aimed at securing the accurate financial information from

appellant that was necessary to effectuate economic justice between the parties.

For reasons not expounded in the certified record, the support action was transferred from the Court of Common Pleas of Cambria County to that of Indiana County in April of 1985. The Honorable Robert C. Earley entered an acceptance order on June 28, 1985 ratifying the subject matter jurisdiction of the Court of Common Pleas of Indiana County and directing that all support payments be made through the Indiana County Domestic Relations Section in accordance with the prior Cambria County orders. John D. Gibson continued to serve as the Domestic Relations Officer on the case after the transfer. A complaint in divorce was filed in Indiana County on May 23, 1986. Thereafter, the docket is replete with orders of various types, including contempt

citations, which document the lower court's frustration with appellant's repeated refusal to permit an orderly and expeditious end to the instant litigation.

After many and sundry vicissitudes, including multiple changes in appellant's representation and an abortive interlocutory appeal to the Superior Court by appellant, the complete master's report was filed on September 7, 1990. In an opinion and order docketed November 30, 1990, the Honorable Robert C. Earley acknowledged the continued factual disputes between the parties. Nevertheless, after due consideration, Judge Earley rejected appellant's timely filed exceptions. Judge Earley specifically found that the master had acted properly in weighing the testimony presented and in distributing the assets before the court. The lower court opinion explicitly adopted the

master's report on the issues of equitable distribution, alimony, attorney's fees and court costs. A timely notice of appeal from the order of November 30th followed. However, the final decree of divorce was not entered until January 7, 1991.

Because of the somewhat irregular procedural posture of this case, it is incumbent upon us to first consider the propriety of reaching the merits of the claims raised. The question of the appealability of an order goes to our jurisdiction to entertain the arguments advanced by the parties. Fried v. Fried, 509 Pa. 89, 91, 501 A.2d 211, 212 (1985). "Questions relating to jurisdiction are not waived by the failure of the parties to raise them and may properly be raised by the court sua sponte." Id. Our inspection of the certified record discloses that although the order of November 30,

1990 unquestionably dismisses appellant's exceptions to the master's report, it neither explicitly mentions equitable distribution nor does it direct appellant to pay the arrearages accumulated because of his failure to comply with the prior orders of support and alimony pendente lite.

Ordinarily, a right of appeal does not accrue from an order which merely dismisses exceptions to a master's report. Reed v. Reed, 354 Pa. Super. 284, 289, 511 A.2d 874, 877 (1986). Although a rigid interpretation of this rule appears to militate in favor of quashal, we are not constrained to interpret the record before us so superficially. Despite the lower court's failure to artfully draft the pertinent order, the accompanying opinion patently indicates that Judge Earley intended his order to be a

definitive resolution on the question of alimony pendente lite, the accumulated arrearages, and equitable distribution. We recognize that we could remand the case to the trial court for the entry of a new order which reiterates the specific language regarding the arrearages contained in Judge Earley's opinion. However, we decline to impose such a hypertechnical requirement in a case which has already become excessively complex and unduly prolonged.

In the interest of judicial economy we shall obey the directive of our supreme court and "regard as done that which ought to have been done" when the lower court's opinion and order were filed. McCormick by McCormick v. Northeastern Bank, 522 Pa. 251, 254 n.1, 561 A.2d 328, 330 n.1 (1989). See also Pa. R.A.P., Rule 105 (a), 42 Pa. C.S.A. (Liberal Construction and

Modification of Rules); Pa. R.C.P. Nos. 126 (Liberal Construction and Application of Rules) and 127 (Construction of Rules, Intent of Supreme Court Controls), 42 Pa. C.S.A. In light of the fact that a final decree of divorce has been docketed, and that the opinion and order entered by the lower court on November 30, 1990 was clearly intended to be a final pronouncement on the matters discussed in the opinion, we conclude that the instant appeal is properly before us and that we have jurisdiction to address the merits of the parties' claims. See also Campbell v. Campbell, 357 Pa. Super. 483, 516 A.2d 363 (1986), allocatur denied, 515 Pa. 598, 528 A.2d 955 (1987) (although divorce had not been granted at time appeal was taken from interlocutory order resolving economic claims of parties, procedural missteps of counsel and lower court did not prevent

appellate review where final decree in divorce was entered during pendency of appeal). We therefore proceed with an analysis of the issues presented.

Appellant raises two claims for our consideration: did the trial court commit abuse of discretion (1) when setting the award of support/alimony pendente lite, and (2) in crafting an equitable distribution scheme for the parties. In response, appellee argues that (1) the master properly considered the relevant factors in making recommendations to the lower court regarding the equitable distribution scheme; (2) the master carefully reviewed the extraordinary amount of evidence in the case and made proper factual determinations based thereon; and (3) appellant has abused the court system which have turned the instant case into "a legal disgrace." We shall address

these assertions seriatim.

The first part of appellant's argument is that the trial court committed abuse of discretion regarding rulings on the initial support order entered by failing to "properly apply the law" respecting the effect of the prior appeal to the Superior Court, and by "failing to consider all other relevant factors" in crafting the final order relating to alimony pendente lite. Although we have carefully considered the extensive argument appellant has set forth an on these points, we are not convinced. It appears that the true difficulty on this question stems from appellant's refusal to understand that the hearing officer, the lower court judge, and the appellate courts of this Commonwealth are not required to blindly accept appellant's own assessment of his ability to pay spousal support.

Appellant first contends that it was error for the trial court to refuse to modify the support order applicable to the time period of August 1983 through August 1985. The support order in question has already been the subject of a ruling by this court. Insofar as appellant's argument concerns the propriety of the lower court's order, we cannot do better than to quote our prior determination on the matter:

> Appellant maintains that the (lower) court's order of support is confiscatory because he does not have sufficient earning capacity to meet his obligation and is, therefore, forced to sell assets. It is the policy of the law "to make all of a husband's resources available for support of his family." Commonwealth v. Vogelsong, (311) Pa. Super. 507, (515,) 457 A.2d 1297, 1301 (1983).
>
> The trial court did not accept the Appellant's assessment of his ability to pay spousal support. We agree. Even though the family business may be non-profitable for income tax purposes:

> The net income of a defendant as shown on income tax returns is not to be accepted in a support case as the infallible test of his earning capacity. Particularly is this true where the defendant is in business for himself and is allowed substantial business "expenses," items of depreciation and sundry other deductions which enable him to live luxuriously before spending his taxable income.

Commonwealth v. Miller, 202 Pa. Super. 573, 198 A.2d 373 (1964). Commonwealth ex rel. Maier v. Maier, (274 Pa. Super. 580,584, 418 A.2d 558, 561 (1980). Compare: Boni v. Boni, 302 Pa. Super. 102, 448 A.2d 547 (1982).

Murphy v. Murphy, 357 Pa. Super. 710, 512 A.2d 730 (1986), allocatur denied, 514 Pa. 625, 522 A.2d 50 (1987) (unpublished memorandum at 3). The panel then concluded that the trial court simply had not found appellant's testimony to be credible, and affirmed the lower court's decision. Our supreme court found no justification to interfere with this ruling, nor do we at

this late date.

Appellant next questions the trial court's award of alimony pendente lite for the time period of September 1985 through November 1986. In this regard, appellant cites numerous examples of errors and abuses of discretion allegedly committed by both the special master and by the trial court when interpreting the economic data presented by the parties. The determination of the amount to be awarded, whether of alimony or alimony pendente lite, rests in the sound discretion of the trial court. Miller v. Miller, 352 Pa. Super. 432, 441, 508 A.2d 550, 555 (1986). Absent an abuse of that discretion, an appellate court will not disturb the trial court's award. Id. In the context of such determinations, the proper employment of judicial discretion includes the mandate to apply the Divorce Code in a

compassionate and reasonable manner to effectuate the overriding goal of achieving economic justice between the parties. See, e.g., O'Callaghan v. O'Callaghan, 389 Pa. Super. 319, 567 A.2d 308 (1989), allocatur granted, ___ Pa. ___, 589 A.2d 692 (1991); Dyer v. Dyer, 370 Pa. Super. 377, 536 A.2d 453 (1988), allocatur denied, 519 Pa. 654, 546 A.2d 58 (1988). We note that although a master's report is entitled to great consideration, the trial court is not bound by it. Morschhauser v. Morschhauser, 357 Pa Super. 339, 349, 516 A.2d 10, 15 (1986).

We have carefully examined and considered the voluminous certified record transmitted in this case from both Cambria and Indiana Counties. This record leaves no doubt that appellant and appellee disagree regarding the resources commanded by appellant or the economic need experienced

by appellee. However, the record also patently demonstrates that the special master and the trial judges in both counties found appellant to be a non-credible witness.

It is a striking feature of the certified record in this case that documentation needed to support appellant's factual allegations is wholly lacking. An appellate court may consider only facts which have been duly certified in the record on appeal. Button v. Button, 378 Pa. Super. 142, 145, 548 A.2d 316, 318 (1988), citing Commonwealth v. Young, 456 Pa. 102, 115, 317 A.2d 258, 264 (1974); Barner v. Barner, 364 Pa. Super. 1, 9, 527 A.2d 122, 126 (1987). A paper does not become part of the certified record simply by copying it and placing it in the reproduced record. Dorn v. Stanhope Steel, Inc., 368 Pa. Super. 557, 563 n.1., 534 A.2d 798,

801 n.1 (1987), allocatur denied, 518 Pa. 656, 544 A.2d 1342 (1988). In contrast to appellant's assertions, we find no indication in the certified record that the lower court committed any abuse of discretion in connection with the award of alimony pendente lite for the time period of September 1985 through November 1986.

Sub-part three of appellant's first issue contests the propriety of the lower court's ruling on alimony pendente lite between October of 1987 and December 1989. We agree with appellant that an order of support or alimony pendente lite should be fair and non-confiscatory. Commonwealth ex rel. Maier v. Maier, 274 Pa. Super. 580, 418 A.2d 558 (1980). However, we cannot agree with appellant's contention that the trial court made no factual findings and proffered no explanation for the basis of the award in the instant case. The master's report adopted by the lower court is

a lengthy document bound in three volumes which is replete with documentation, factual findings, and explanations which provides more than sufficient basis and justification for Judge Earley's ruling. Again, although appellant patently disputes the data supplied by appellee, it is equally patent that the lower court does not find appellant to be a credible witness and is unwilling to rely on his testimony. Having carefully scrutinized the master's report, we find no indication that Judge Earley committed abuse of discretion and we affirm the action of the lower court.

The thrust of appellant's second claim is that the trial court committed abuse of discretion in making its order of equitable distribution by assigning incorrect values to certain marital property, by making duplicate dispositions of

property, and designating separate property as marital property. In this vein, appellant raises the following six sub-issues:

1. It was an abuse of discretion to value the assets of Johnstown Truck & Tractor, Inc., at $43,297 and require Husband to pay Wife one-half of the liabilities of the corporation.

2. It was an abuse of discretion to find that a John Deer franchise was a marital asset and value it at $25,000.

3. There is no legal power to award Wife the personal property in the farm house and residence without excluding improvements and property purchased by Husband after separation which was not marital property and to fail to value the personal property awarded to Wife.

4. There is no factual basis for the finding that on the date of separation the truck and tractor bank account had $10,000, and an award to Wife in any

amount is duplicative of other items awarded.

5. The separate award of "used car and truck inventory" was a duplication of the award of the corporate asset.

6. It was an abuse of discretion to award Wife the net rental income from the farmhouse and marital residence when that income was imputed to Husband for purposes of the alimony pendente lite award.

The arguments underlying all six of these sub-claims are similar and can be summarized as follows: (a) this case has been pendent for a great length of time and the master was confronted with an enormous mass of economic information, naturally leading the master into numerous errors which were unfairly and improperly adopted by the trial court; (b) important assets were never assigned any value; (c) the trial court did not have competent evidence before it to reach the conclusions drawn; (d) the trial court unfairly and

improperly gave too much weight to the evidence presented by appellee, particularly in assigning value to assets such as the corporate airplane; (e) both the special master and the trial court failed to take into account the general business decline experienced by the greater Johnstown area during the pendency of this action; (f) neither the special master nor the trial court accepted tax returns and other exhibits and testimony presented by appellant as dispositive statements regarding the value of appellant's assets and the level of his economic power; and (g) the equitable distribution order "double charges" appellant for certain assets and cash sums awarded to appellee.

Our scope of review in equitable distribution matters is limited. Lyons v. Lyons, 401 Pa. Super. 271, 276, 585 A.2d 42, 45 (1991). It is well established

that "absent an abuse of discretion on the part of the trial court, we will not reverse an award of equitable distribution." Hill v. Hill, 401 Pa. Super. 183, 185, 584 A.2d 1040, 1041 (1991), citing Hovis v. Hovis, 518 Pa. 137, 541 A.2d 1378 (1988). When reviewing the record of the proceedings, we are guided by the fact that trial courts have broad equitable powers to effectuate justice and we will find an abuse of discretion only if the trial court has misapplied the law or failed to follow proper legal procedures. Lyons v. Lyons, supra at ___, 585 A.2d at 45. The finder of fact is entitled to weigh the evidence presented and assess its credibility. Williamson v. Williamson, ___ Pa. Super. ___, ___, 586 A.2d 967, 972 (1991). The factfinder is free to believe all, part, or none of the evidence and the Superior Court will not disturb the

credibility determinations of the court below. Id.

As we have already commented, appellant and appellee clearly disagree on virtually every fact connected with this case. However, factual disputes are left to the trial court for resolution. Id. Simply put, neither the special master nor the lower court judges who have considered the matter are willing to give much credence to the evidence submitted by appellant. Mindful of the standards governing our review of appellant's equitable distribution claims, we have carefully scrutinized the entire certified record. We have discerned no legal or procedural errors affecting the substantive rights of the parties nor have we found any indication that the lower court has committed any abuse of discretion. In accordance with the foregoing, we affirm the

order of November 30, 1990 and direct appellant to comply therewith.

As a separate and additional matter, appellee has requested this court to impose counsel fees and costs against appellant in light of his "abuse of the legal process." Although we have carefully reviewed the certified record before this panel, we cannot unequivocally characterize appellant's behavior as "dilatory, obdurate or vexatious" within the meaning of Pa. R.A.P., Rule 2744, 42 Pa. C.S.A.[1]

---

[1]Rule 2744 is, of course, not the only avenue of redress open to an aggrieved party suffering from the dilatory, obdurate and vexatious conduct of an opposing litigant. Section 2503 of Title 42 empowers the trial court to impose sanctions in the form of counsel fees and costs against litigants who indulge themselves in unreasonable vendettas at the expense of permitting speedy and just resolution of legal matters. See, e.g., State Farm Mutual Automobile Insurance Co. v. Allen, 375 Pa. Super. 319, 326, 544 A.2d 491, 494 (1988) (in general, where the record supports the lower court's finding of fact that the conduct of one party was in bad faith, an award of counsel fees will not

be disturbed absent an abuse of discretion); Brenckle v. Arblaster, 320 Pa. Super. 87, 466 A.2d 1075 (1983) (same). See also Richland School District v. Richland Educational Ass'n, 124 Pa. Commw. 459, 556 A.2d 531 (1989) (party which vexatiously disobeyed trial court's order and caused petitioner to incur attorney fees in bringing contempt proceeding was liable for petitioner's attorney fees, notwithstanding belated compliance with court's order which prevented ultimate finding of contempt).

Nor can we deem the instant appeal to be "frivolous" as that term is defined under Rule 2744. While we recognize that this litigation has been complex and protracted, appellee has not presented us with specific examples of conduct for which appellant clearly deserves to be penalized. See Williamson v. Williamson, supra (a litigant should not be discouraged from the proper exercise of appellate rights for fear that sanctions will be imposed). Nevertheless, we caution appellant that multiple appeals, taken for the purpose of

delay, which focus on issues that have already been resolved, or which present arguments running counter to well settled rules of law will be deemed "frivolous" by this court. Such appeals are the proper subject for sanctions under Rule 2744. See, e.g., Jackson v. Modern Mailers, Inc., 371 Pa. Super. 178, 537 A.2d 878 (1988); Coraluzzi v. Commonwealth, 105 Pa. Commw. 305, 524 A.2d 540 (1987). We further caution appellant that an appeal is considered "frivolous" and warrants the award of attorney fees if, either as a matter of fact or law, the appellant's contentions have no likelihood of success. Richland School District v. Richland Education Association, 124 Pa. Commw. 459, 462, 556 A.2d 531 (1989). To do otherwise would be to reward an unreasonable prolongation of the contest. Id. See also Washington Twp. Municipal

Authority v. Pennsylvania Labor Relations Board, 131 Pa. Commw. 36, 43, 569 A.2d 402, 405 (1990), allocatur denied, ___ Pa. ___, 581 A.2d 577 (1991) (an appeal is "frivolous" so as to warrant imposition of Rule 2744 sanctions "when the realistic chances of ultimate success are slight and continuation of the contest is unreasonable").

Order affirmed.

APPENDIX B

App. 28

IN THE COURT OF COMMON PLEAS
OF
INDIANA COUNTY, PENNSYLVANIA
NO. 769 CD 1986

Patricia L. Murphy

Plaintiff

v.

Joseph Murphy, Jr.

Defendant

PETITION TO OPEN HEARING
DEFECT APPARENT ON FACE OF RECORD.
FALSE EVIDENCE AND INTRINSIC FRAUD
SUBMITTED TO THE COURT BY THE MASTER

AMENDED PETITION AND RULE TO SHOW CAUSE.

1. Due to the fact that defendant on his own pro se petition dated February 26, 1991 was not specific, we wish to submit under the provision as set forth in the Pennsylvania Divorce Code, Chapters 6 and 7;

> RULE 602 - Opening or Vacating Divorce Decrees "A motion to open a decree of divorce or annulment may be made only within 30 days after entry of the decree and not thereafter. Such motion may be

> where it is alleged that the decree was procured by intrinsic fraud or that there is now evidence relating to the cause of action which will sustain the attack upon its validity. A motion to vacate a decree or strike a judgment alleged to be void because of a fatal defect apparent upon the fact of the record, must be made within five years after entry of the final decree. Intrinsic fraud is such as relates to a matter adjudicated by the judgment, including perjury and false testimony, whereas extrinsic fraud relates to matters collateral to the judgment which have the consequence of precluding a fair hearing or presentation of one side of the case."

23 P.S. - 41

> "Petition to open divorce decree for purpose of taking additional testimony is equitable in nature, and court is obliged not only to review record for legal error, but also to consider record as whole to determine justice of result. Id."

2. On February 26, 1991 defendant submitted 29 issues of false entry, by the master, on the record. Also, the master placed an award of $89,000. against defendant purely by conclusion, assertion, and

fraudulent statements.

> 23 P.S. "A decree in divorce must be based upon a complaint which complies with the rules of procedure and on findings of fact by the master, supporting the averments. Quesenberry v. Quesenberry, 11 Adams L.J. 47, 19 Cumb 78, 1969."

Respectfully submitted,

Joseph Murphy, Jr.

APPENDIX C

App. 31

DOCKET OF THE SUPREME COURT
R.04877 No. 571 W.D. ALLOCATUR DOCKET 1991

Patricia L. Murphy

v.

Joseph Murphy, Jr.,

Petitioner

10/31/91	Petition for Allowance of Appeal from the Order of the Superior Court of Pennsylvania entered October 3, 1991 at No. 32 Pittsburgh 1991 affirming the Order of the Court of Common Pleas of Indiana County, Civil Division, entered November 30, 1990 at No. 769 1986, filed.
11/13/91	Reproduced Record in (2) Volumes, received.
11/14/91	Brief in Opposition to Petition for Allowance of Appeal, filed.
11/15/91	Brief in Opposition to Petition for Allowance of Appeal received with postal receipt.
11/21/91	Answer to Brief in Opposition to Petition for Allowance of Appeal, filed.
12/5/91	Response to Answer to Brief in Opposition to Petition for allowance of Appeal, filed.
12/6/91	Response to Answer to Brief in

Opposition to Petition for Allowance of Appeal received with postal receipt.

12/13/91 "Pursuant to Rule 3331. Review of Special Prosecutions or Investigations: Notice to Plead", filed. (Murphy)

12/16/91 Letter answer, filed.

1/8/92 Petition Under Rule 1511 Manner of Obtaining Judicial Review Notice to Plead, filed. (Murphy)

1/17/92 Answer to Petition Under Rule 1511, filed. (O'Malley)

1/17/92 Motion to Quash Appeal, filed. (O'Malley)

1/17/92 Motion to Quash Petition, filed. (O'Malley)

1/17/92 Motion to Quash Document Designated "Pursuant to Rule 3331. Review of Special Prosecutions or Investigations: Notice to Plead", filed. (O'Malley)

1/21/92 Answer to Petition Under Rule, 1511, Motion to Quash Appeal, Motion to Quash Petition, Motion to Quash Document Designated "Pursuant to Rule 3331. Review of Special Prosecutions or Investigations: Notice to Plead" received with postal receipt.

2/3/92 Answer to Document Designated as "Pursuant to Rule 3331. Review of Special Prosecutions or

Investigations: Notice to Plead", filed. (O'Malley)

2/4/92 Answer to Document Designated as "Pursuant to Rule 3331. Review of Special Prosecutions or Investigations: Notice to Plead" received with postal receipt.

2/3/92 Response to Answer to Filed Pursuant to Rule 3331. Review of Special Prosecutions or Investigations with Notice to Plead, filed. (Murphy)

2/3/92 Reply to Answer to Petition Under Rule 1511, filed. (Murphy)

2/7/92 "Pursuant to Rule 1542. Oral Argument and Evidentiary Hearing; Subsection B.", filed. (Murphy)

2/12/92 Answer to Document Designated as "Pursuant to Rule 1542. Oral Argument and Evidentiary Hearing; Subsection B", filed. (O'Malley)

2/13/92 Answer to Document Designated as "Pursuant to Rule 1542. Oral Argument and Envidentiary Hearing; Subsection B" received with postal receipt.

2/20/92 "Reply to Answer to Document Designated as 'Pursuant to Rule 1542. Oral Argument and Evidentiary Hearing; Subsection B'", filed. (Murphy)

3/2/92 "Pursuant to Rule 3309. Applications for Extraordinary

Relief", filed. (Murphy)

3/12/92 Answer to Document Designated as Pursuant to Rule 3309. Applications for Extraordinary Relief, filed. (O'Malley)

3/23/92 "Reply to Mr. O'Malley's Answer to Pursuant to Rule 3309", filed. (Murphy)

3/25/92 Letter answer, filed. (O'Malley - in response to Mr. Murphy's filing of 3/23/92)

3/26/92 Letter answer received with postal receipt.

ORDER (Petition for Allowance of Appeal)
"April 28, 1992
Petition Denied
Per Curiam"

4/28/92 Judgment entered.

ORDER (Motion to Quash Appeal)
"April 28, 1992
Dismissed as Moot
Per Curiam"

4/28/92 Judgment entered.

ORDER (Motion to Quash Petition)
"April 28, 1992
Dismissed as Moot
Per Curiam"

4/28/92 Judgment entered.

ORDER (Motion to Quash Document Designated, etc.

"April 28, 1992
Dismissed as Moot
Per Curiam"

4/28/92 Judgment entered.

ORDER (Petition Under Rule 1511)
"April 28, 1992
Petition Denied
Per Curiam"

4/28/92 Judgment entered.

ORDER (Pursuant to Rule 3309)
"April 28, 1992
Application Denied
Per Curiam"

4/28/92 Judgment entered.

5/15/92 "Pursuant to Rule 2542. Time for Application for Reargument", filed. (Murphy)

ORDER
"June 16, 1992
Petition for
Reconsideration Denied
Per Curiam"

6/16/92 Judgment entered.

APPENDIX D

App. 36

DOCKET OF THE SUPREME COURT
R.04480 No. 343 W.D. ALLOCATUR DOCKET 1991

Patricia L. Murphy,

Respondent

v.

Joseph Murphy, Jr..

Petitioner

7/5/91	Petition for Allowance of Appeal from the Order of Superior Court entered May 28, 1991 at No 672 Pgh 1991 (Reargument Denied June 14, 1991) granting the Motion to Quash from the Order of the Court of Common Pleas dated December 12, 1989 filed.
7/26/91	Brief in Opposition to Petition for Allowance of Appeal, filed.
8/1/91	Brief in Opposition to Petition for Allowance of Appeal received with postal receipt.
8/8/91	Response to Brief filed by James Francis O'Malley in Opposition to Petition for Allowance of Appeal, filed.
8/21/91	Original Record in (1) part, (20) transcripts and (1) deposition received.
	ORDER "November 25, 1991

Petition Denied
Per Curiam"

11-26-91 Judgment entered on docket.

12-3-91 Application for Reconsideration filed.

ORDER
"December 30, 1991
Application Denied
Per Curiam"

12-30-91 Judgment entered on docket.

12-30-91 R E M I T T E D

1-13-92 "Pursuant to Rule 1702. Stay Ancillary to Appeal" filed. (Murphy)

1-17-92 Answer and Motion to Quash Petition for Stay Ancillary to an Appeal filed. (O'Malley)

1-21-92 Answer and Motion to Quash Petition for Stay Ancillary to an Appeal received with postal receipt.

ORDER
"March 31, 1992
Motion Denied
Per Curiam"

4-1-92 Judgment entered on docket.

4-14-92 "Pursuant to Rule 2542. Time for Application for Reargument" filed. (Murphy)

4-14-92 Answer to document designated as "Pursuant to Rule 2542. Time

for Application for Reargument" filed. (O'Malley)

4-15-92 Answer to document designated as "Pursuant to Rule 2542. Time for Application for Reargument" received with postal receipt.

4-28-92 "Response to Document Submitted by Mr. James O'Malley identified as 'Answer to Document Designated as Pursuant to Rule 2542. Time for Application for Reargument filed. (Murphy)

4-29-92 Answer to "Response to Document Submitted by Mr. James O'Malley identified as 'Answer to Document Designated as Pursuant to Rule 2542. Time for Application for Reargument filed. (O'Malley)

4-30-92 Answer to "Response to Document Submitted by Mr. James O'Malley identified as 'Answer to Document Designated as Pursuant to Rule 2542. Time for Application for Reargument'" received with postal receipt.

5-15-92 "Reply to Letter Dated April 29, 1992 Submitted to Irma T. Gardner by James Francis O'Malley--Supplemental Reproduced Brief Concerning Issues Within" filed. (Murphy)

5-22-92 "Letter Answer to Reply Letter dated April 29, 1992" filed. (O'Malley)

5-26-92 "Letter Answer to Reply Letter

dated April 29, 1992" received
with postal receipt.

ORDER (Reargument)
"May 26, 1992
Application Denied
Per Curiam"

5-27-92 Judgment entered on docket.

APPENDIX E

App. 40

PROVISIONS ACCORDING TO THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

The Fifth Amendment to The United States Constitution provides that no person shall "be deprived of life, liberty, or property, without due process of law."

The Fourteenth Amendment to The Constitution provides ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law."

APPENDIX F

App. 41

LETTER SENT TO:
MR. MINAHAN
OFFICE OF THE ATTORNEY GENERAL
WESTERN REGIONAL OFFICE
564 FORBES AVENUE
4th FLOOR, MANOR COMPLEX
PITTSBURGH, PA 15219

Dear Sir

Enclosed is a copy of a Petition For Writ Of Certiorari submitted to the United States Supreme Court pertaining to the worst possible case of fraud and legal extortion that could possibly be present in the court systems of Pennsylvania.

Indeed the violations set forth therein are a matter of constitutionality although the case is derived from a divorce issue which has continued for some nine and one-half (9½) years. The most extraordinary fact is due to the constrainable issues that are now present in your office due to the prosecutions set forth at the Cambria County Court. I

might add that this investigation was being initiated at the time that my case was before the Cambria County Court system. Being an individual, and at that time, 54 years of age, I had never throughout my life span had any conflicts with the law other than a parking meter ticket, and was so completely unaware of the situations that took place pertaining to the judicial administration, per se, in this court system.

The extraordinary fact surrounding my complaint to you is the fact that in 1986 my case was appealed before the Superior Court, at which time they affirmed the order handed down by the Cambria County Court, even though the constitutionality set forth then was completely unobserved. To further integrate the situation, a second appeal was submitted to The Superior Court and in 1991, an opinion was

handed down, quite a controversial opinion I might add, at this time, because the Superior Court confirmed appellant's issues set forth that indeed numerous errors and mistakes did take place, but they still affirmed the order again resulting from the Cambria County Court system, which followed with an appeal to the Pennsylvania Supreme Court. As of June 16, 1992 the appeal was denied by the Pennsylvania Supreme Court.

Pursuant to the Rules of Civil Procedure, I am therefore notifying you and requesting your office to submit to a meeting with said appellant to further converse on the situations thereto. Even to the fact that the judges have been removed from the bench and the trial still continues, I feel at this time that I have much more pertinent information on the issues set forth that extend beyond the

scope of the judges at Cambria County.

I will be waiting for your reply.

Respectfully

Joseph Murphy, Jr.

Dated: June 25, 1992

Supreme Court, U.S.
FILED
AUG 19 1992
OFFICE OF THE CLERK

No. 92-159

In The

Supreme Court of the United States

October Term, 1992

JOSEPH MURPHY,

Petitioner,

v.

PATRICIA L. MURPHY,

Respondent.

Petition For Writ Of Certiorari
To The Supreme Court Of Pennsylvania

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JAMES FRANCIS O'MALLEY, ESQUIRE
(Counsel of Record)
YOST & O'MALLEY
Suite 600
U.S. National Bank Building
Johnstown, PA 15901-1988
(814) 539-8126

Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Whether a defendant in a divorce action filed in July of 1983 who has absolute control of all of the marital assets, has refused to pay minimal support to his wife, forcing her onto welfare, has had eleven different lawyers representing him over an eight and one-half year period where he continually delayed proceedings, has taken numerous appeals to the Pennsylvania Superior Court and the Pennsylvania Supreme Court with the deliberate intention of delaying distribution of marital assets to his wife, and where no Federal issue was ever raised by his counsel, has been in any way deprived of constitutional rights.

STATEMENT OF THE CASE

In July of 1983, Patricia Murphy, after having been beaten by her husband and put in the hospital, and having been threatened after her release from the hospital that he would harm her to an even greater extent, filed a Complaint in Divorce and also secured an Order granting her "protection from abuse." From the time that the Complaint was first served on Joseph Murphy, he has been represented by attorneys, *eleven* in number, from firms in Cambria County, Pennsylvania, Indiana County, Pennsylvania, Westmoreland County, Pennsylvania, and Allegheny County, Pennsylvania. He now claims that he was cheated by all eleven lawyers or firms.

Patricia Murphy presented her testimony in less than one day, and all of the rest of the testimony, over a period of years, which covers hundreds of pages, was Joseph Murphy trying to hide the assets.

Joseph Murphy was found in contempt of court a number times, and in 1984, when he refused to obey another Court Order and was found in contempt, he appealed the finding to the Superior Court of Pennsylvania in a deliberate attempt to delay the proceedings. The Superior Court found him to be completely non-credible, and found against him, and he then filed a Petition for Allowance of Appeal to the Supreme Court of Pennsylvania, which was refused.

Mr. Murphy continued with his delaying tactics for a number of years, had the case transferred to Indiana County, and when the Master in Divorce filed his voluminous report covering with great specificity each and every finding, three judges in the Indiana County Court

found Mr. Murphy not to be credible and approved the findings of the Master.

Mr. Murphy appealed that decision to the Superior Court, having previously filed another appeal for the purpose of delay, which was dismissed as interlocutory, and after argument before the Superior Court, Judge Cercone handed down a 16 page Opinion, once again noting that everyone found Mr. Murphy to be totally non-credible.

Mr. Murphy filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court, which was denied, and then filed a series of appeals, on a pro se basis, since no competent lawyer ever would have filed such appeals, which were "based" on Rules of Appellate Procedure that had no conceivable connection with the case. Every appeal was denied by the Supreme Court.

Joseph Murphy, after consistently claiming that he has no money whatsoever, states that he has paid his lawyers, who supposedly cheated him, "well over $200,000." A number of his lawyers were well-known members of the Bar of the Commonwealth of Pennsylvania, and his comments about his own lawyers are the type of continual irrational and untrue statements that he has made in this case over the years.

Since filing this Petition for Writ of Certiorari, he has once again filed another appeal to the Superior Court of Pennsylvania, which he has maligned constantly. To date he has filed a total of six appeals through counsel to the Pennsylvania Superior and Supreme Courts, and nine pro se, for a total of fifteen appeals other than this writ, and has properly been denied on each and every appeal.

ARGUMENT

Not one judge who ever had *any* contact with this case has been removed from the Bench. In addition, Joseph Murphy has abused the legal system of the Commonwealth of Pennsylvania to the point that he has turned this case into a "legal disgrace".

He has deliberately vilified a number of fine and prominent judges in the lower courts, five of whom at different times have examined his legal shenanigans, and found him to be non-credible, and several panels of the Pennsylvania Superior Court, as well as the entire Supreme Court of Pennsylvania, all have found him to be non-credible. His clear purpose is to delay distribution to his wife of her share of marital assets awarded to her.

Further, not one of the eleven lawyers who represented him ever took the position that his State or Federal civil rights were being violated in any fashion, either before the lower courts, before the Superior Court of Pennsylvania, or before the Supreme Court of Pennsylvania. It was only after Mr. Murphy decided to become his own lawyer, and saw that the Supreme Court of Pennsylvania was tired of his attempts to jerk them around, that he started to claim that his civil rights were being violated even though, in fact, he was the one who was violating every legal principal by which the law operates.

CONCLUSION

A Court appointed Master, five lower court judges, two different panels of the Superior Court of Pennsylvania, and the entire Supreme Court of Pennsylvania have found Mr. Murphy to be non-credible.

All of the judges and justices who have ever been involved with this case are highly regarded members of the judiciary, who have taken their obligations seriously, and they have given Mr. Murphy more leeway than he ever should have been allowed and put up with his antics to the point that they consistently had to threaten him with contempt of court on numerous occasions to secure even the slightest cooperation from him.

Finally, there never was a Federal issue presented since none ever existed, and the petition for a Writ of Certiorari should be denied.

James Francis O'Malley, Esquire
(Counsel of Record)
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U.S. National Bank Building
Johnstown, PA 15901-1988
(814) 539-8126

Counsel for Respondent

Supreme Court, U.S.
FILED
SEP 14 1992
OFFICE OF THE CLERK

NO. 92-159

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IN THE

SUPREME COURT OF THE UNITED STATES

==========

OCTOBER TERM, 1992

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JOSEPH MURPHY, JR.

Petitioner

vs.

PATRICIA L. MURPHY

Respondent

==========

Petition For Writ Of Certiorari To
The United States Supreme Court From
The Pennsylvania Supreme Court

==========

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

==========

Joseph Murphy, Jr.,
- Pro Se
R.D. #1 Box 202
Seward, PA 15954
(814) 446-5602

REPLY TO QUESTION PRESENTED

The allegations set forth by Mr. James O'Malley, representing the credibility of appellant has been an ongoing occurrence for almost nine years. The non-factual statements of Mr. O'Malley that appellant forced his wife onto welfare, that he has had eleven different lawyers and has taken numerous appeals to the Pennsylvania Superior Court are false allegations. The whole concept of defendant's appeal to The United States Supreme Court is not one of domestic problem, but rather the procedural due process of a corrupt court system in the state of Pennsylvania, as denoted in subject appeal. Mr. James O'Malley secured an ex parte order from the Cambria County Court on October 3, 1983 based on false information.

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STATEMENT OF THE CASE

Again the allegation made by Mr. James O'Malley of appellant beating his wife and having her put in the hospital is a complete falsified and fraudulent statement, and as stated before, he secured an ex parte order without a hearing, and again the basic reason for this appeal is the fact that appellant was not aware of any such complaints. The defendant was completely unaware of the complaint filed by Mr. James O'Malley on October 3, 1983 at the Cambria County Court until December 21, 1983, some three months later.

The falsification of this case by Mr. James O'Malley continues to the fact that pursuant to the rules of court of Pennsylvania, the Cambria County Court should not have accepted jurisdiction in

in this matter simply because appellant and appellee were not residents of Cambria County. The most important and critical issue to that fact is that the Cambria County Court, pursuant to the rules of Pennsylvania, did not have proper jurisdiction over same and again, being the result of this appeal. The Cambria County Court was at that time under investigation for wrongdoings and improper use of the legal system by the Attorney General's Office of the state of Pennsylvania.

There has not been one judge who has confronted the issues of said case from the time that it was transferred from Cambria County to Indiana County in 1986. The Superior Court affirmed the actions set forth by the Cambria County Court, and the Indiana County

Court only assumed the orders issued by the Cambria County Court and initiated said procedures from the orders handed down by the Cambria County Court. Indeed, again this being the reason for this appeal.

Mr. O'Malley's claim that appellant has paid his lawyers $200,000. is absolutely not coherent to appellant's stating that the expense of said case now amounts to well over $200,000. Indeed, Mr. O'Malley throughout the entire case has never submitted a final bill, but has only asserted that plaintiff owed him well over $100,000. and for a period of almost nine years has not received any amount of money whatsoever from plaintiff.

REPLY TO ARGUMENT

Mr. O'Malley further alleges that there has been no judge who has had contact with said case being removed from the bench. This is completely a falsified statement due to the fact that, appellant wishes to state again before the court, the Cambria County Court system was a matter of local television coverage for over a period of a year and a half, and made headlines in the local news media exposing the corruption and wrongdoings that were set forth in that court system. The falsification and misuse of the legal system by Mr. James O'Malley through a judge at the Cambria County Court, of whom he was a business associate, is indeed one of the most drastic conditions that can be set forth in the legal system in the United States.

He further alleges that five prominent judges in the lower courts have examined the shenanigans set forth by the appellant, and indeed, this is another false statement due to the fact that no judge has examined the record in said case. As a matter of fact, of the two judges involved at the Indiana County Court, one made the statement in open court that he was not going to examine a record that had commenced for seven years, then two days after that court hearing, the judge stepped down from the bench, informing the local news media that the job had become too burdensome to handle. That was Judge Earley of the Indiana County Court. Secondly, after that occurred, Judge Handler, a retired judge of the Indiana County Court, proceeded to again intercede into the case

and in open court so stated that he did not want to hear anything that happened over a period of eight years -- all he was concerned with was what was before him at the moment, and issued an order without adjudication to the facts, charging appellant $43,000. which he claimed was a valid order handed down from the Cambria County Court. Finally, the case was interceded by Judge Ruddock of the Indiana County Court. Appellant wishes to state that presently, without the record being scrutinized for falsification and most of all whether indeed an invalid order was handed down by the Cambria County Court is the problem appellant is facing at the moment. Mr. O'Malley further alleges that the eleven lawyers, five judges and the Superior Court have all found appellant not to be

a credible witness, however said case was never scrutinized to that fact and appellant at this time wishes to state before the court, there has not been one instance throughout the nine years whereby appellant has submitted falsified information, made derogatory remarks, or furnished any invalid information to ascertain the value of said case.

Mr. O'Malley just recently falsified the information concerning this appeal to The United States Supreme Court and advised the lower court that the high court of our nation was not going to "fool around" with appellant. This is indeed an example of what has taken place over the period of this case since 1983.

CONCLUSION

In conclusion thereof, pursuant to the rules of The United States Supreme Court, Mr. James O'Malley has been found guilty of malpractice procedures in the federal court in Pittsburgh, Pennsylvania recently and has been fined a considerable amount of money at the federal court level, and again this is a well known occurrence, being in the news media in the Johnstown and local papers. I might add that Mr. O'Malley is desperately trying to hide the misuse of the legal system that he has been involved with along with a corrupt court system since 1983.

Respectfully submitted,

JOSEPH MURPHY, JR.
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